



Appeal Decision

Site visit made on 6 February 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2024

Appeal Ref: APP/P1805/W/23/3326124

Broad Corner, Blackwell Road, Barnt Green, Worcestershire B60 1PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
 - The appeal is made by Mr and Mrs A Bromley against the decision of Bromsgrove District Council.
 - The application Ref 22/01416/CUPRIO.
 - The development proposed is conversion of agricultural building to four dwellings.
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for conversion of agricultural building to four dwellings at Broad Corner, Blackwell Road, Barnt Green, Worcestershire B60 1PU in accordance with the application Ref 22/01416/CUPRIO and the details submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development on the application form refers to various drawings and therefore comprises wording that is not an act of development. I have therefore used the description of development as it appears on the decision notice, which I consider to be clearer.
3. The Order permits the change of use of a building and any land within its curtilage from agricultural use to a use falling within use class C3 (dwellinghouses). Paragraph Q.1 of the Order sets out that development is not permitted by Class Q if – (a) The site was not used solely for an agricultural use as part of an established agricultural unit: (i) on 20 March 2013; or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use; or (iii) in the case of a site which was brought into use after 20 March 2013, for a period of at least 10 years before the date development under Class Q begins.
4. I have also had regard to the definition of various terms within paragraph X of the Order. An “agricultural building” means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and “agricultural use” refers to such uses. An “established agricultural unit” means agricultural land occupied as a unit for the purposes of agriculture on or before 20th March 2013 or for 10 years before the date the development begins.

5. A "site" is defined as the building and any part of its curtilage. For the purposes of Class Q, "curtilage" is defined as: (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.

Main Issue

6. The main issue is whether the proposal would comply with the definition of permitted development as set out in the Order, with particular regard to paragraph Q.1(a) and the definition of site and curtilage.

Reasons

7. Broad Corner comprises a group of buildings including a dwelling house and outbuildings. The evidence before me is such that land and buildings at Broad Corner was once known as The Sidnalls. The appeal site includes a large rectangular shaped building which once served as a piggery (the piggery building).
8. A conveyance before me dated 24 September 1985 demonstrates that Mrs M J Knowles of The Sidnalls purchased an area of land (edged in green on a plan attached to the conveyance) from H G Green and Sons Limited. The land was formerly part of Wheeley Farm and clearly includes the piggery building. The main parties agree that on the balance of probability, this land, including the piggery building was used for the purposes of agriculture until the time of the conveyance. I find no reason to consider otherwise.
9. The piggery building is a concrete portal framed structure, with concrete floor and a shallow pitch corrugated roof. Each of the long flanks has a lean-to structure also in concrete, with shallow pitch corrugated roof. Inside, the large central section is laid out as pig pens, with feeding troughs and doorways to the lean-to areas. Chalk boards once used to keep information/counts of pigs are still present within some of the pig pens. Access between the pig pens and flanking lean-to structures appears to have been facilitated by sliding metal doors, some of which remain in situ.
10. Together, the central section and flanking lean-to structures demonstrate that the building was designed to form a piggery, and they remain in situ. They form a significant proportion of the building's footprint.
11. The northerly section of the piggery building includes an area without pens, with access wide enough to accommodate a vehicle, such as a tractor. The southerly section includes a further area without pens, shown as a store on the existing plans. However, these areas of the building appear incidental and/or ancillary to the primary function of the building as a piggery.
12. The main parties agree that Mrs Knowles used the wider land for the keeping of rare breed sheep until 14 February 2014, said to be confirmed by an agricultural holding. Furthermore, they also agree that Mrs Knowles also used the land for the keeping of horses, which is an equestrian use. Fields are said to have been rented out to a third party under another agricultural holding until 7 September 2015. However, the details of these agricultural holdings and any plans detailing their extent are not before me.

13. The affidavit of Mr Bromley (one of the appellants) confirms that the appellants viewed the property in early August 2013, and subsequently purchased the property and took up residence on 18 February 2014. Mr Bromley confirms that at the time of purchase, the piggery building appeared unused. He also confirms that it has not been used for any purpose since their purchase, and that all adjoining land has been used for the keeping of horses. The affidavit includes photographs showing the outside of the piggery building and parts of the inside taken by Mr Bromley on 23 June 2023, which clearly demonstrate the pig pens, feeding troughs and chalk boards in situ.
14. There are no other statutory declarations before me regarding the use or otherwise of the piggery building in the intervening period from September 1985 until the appellants' purchase in February 2014.
15. Furthermore, there are no council tax records or business accounts before me to suggest the nature of any business operation that may have operated in regard to the piggery building or any other land.
16. The Google Earth images before me are dated June 2003 and June 2013 and show sheep within the wider land, but not within the piggery building or its immediate vicinity. The June 2003 image does not show the full extent of the appeal site or adjoining land. The later image shows the presence of a stable block, finished in a green colour, considered by both parties to have been implemented pursuant to a permission¹ granted in April 2000.
17. A Google Streetview image dated October 2009 provided by the Council shows the piggery building with horses immediately adjacent, as well as the presence of the green stable block, immediately adjacent to the westerly side of the building. There are no sheep within this image. Aerial photography from 2017 onwards is said by the Council to indicate equestrian use and some limited storage use to the north of the piggery building, and do not indicate any sheep. However, these images are not before me.
18. I note that the Google Street View image dated October 2008 indicates the northerly section of the piggery building, internally illuminated, with some items inside. While the main parties have not commented on this aspect of the image, the resolution is such that I cannot ascertain the nature of the items within the building. In any event, the image does not show any other parts of the piggery building.
19. By itself, the presence of equestrian equipment and/or horses within in the vicinity of the appeal building does not form compelling evidence of the use or otherwise of the piggery building. The green stable block is no longer in situ.
20. Overall, each image before me represents a snapshot in time, and they suggest, along with other anecdotal evidence that the use of the wider land has changed in the intervening years since September 1985. For some time since 1985, the wider land was in mixed agricultural and equestrian use, but it now appears to be principally in equestrian use.
21. The appellants have submitted sales particulars for The Sidnalls, prepared by Fisher German. Although undated, it is likely that they were prepared before

¹ Planning Application Ref: B/2000/0082, erection of two wooden stables and tack room, granted 17 April 2000.

- early August 2013, when the appellants viewed the property. Both parties rely on these particulars.
22. While the appellants state that the particulars demonstrate the agricultural nature of the piggery building, the Council suggests the particulars indicate it was at least in part use as a garage and storage. I note that they also indicate the presence of internal pens in the larger central section. In any event, the sales particulars include a caveat that they are for guidance and cannot be relied upon.
23. The appellants claim that the vendor at the time of purchase was the daughter of Mrs Knowles and that she lived at the property with her mother for an unqualified period of time. It is stated that during conversations with the appellants at the time of purchase, she indicated that "*there had been no intervening non-agricultural use*". Although I accept that this reported position is unqualified in terms of dates, it is likely to be founded on personal observations or knowledge as a resident and/or close family member.
24. The comments of a local Councillor are that "*These buildings were sold off circa 1986 and as far as I am aware they no longer form part of an agricultural holding so they could not be used for agriculture on 20/03/2013, the relevant date. The small field has been used for horses, which is not agriculture and I understood that the old piggery was used some time ago by a builder for the storage of materials etc.*"
25. The comments of the local Councillor appear to corroborate the approximate date at which Mrs Knowles purchased the land and buildings; that the use of the wider land since that time included the keeping of horses; and suggest that the building was not in agricultural use on 20 March 2013. However, the comments are not expressed in terms of any personal observations as to the inside of the building.
26. The presence of pig pens and feeding troughs in the larger central section would be a significant barrier to extensive storage. Even if the building was used for storage by a builder, no trace of that use remains, and my own observations indicate that the central area has not been used for a long period of time.
27. Overall, the anecdotal evidence before me is therefore not conclusive. I have some sympathy with the Council in this regard, particularly as the Order is clear that the burden of proof falls upon the appellants. However, given the absence of conclusive evidence to demonstrate the use or otherwise of the piggery building over a period of over 38 years, I must also consider the balance of probabilities in this case.
28. The building was clearly designed as a piggery. The central part of the building and lean to structures form almost all of the building's footprint. The other parts of the building are clearly designed to be ancillary/incidental to the use of the building as a piggery.
29. It would have been open to Mrs Knowles to have removed the internal pens and troughs to facilitate the use of the whole of the building for agricultural or equestrian purposes during her ownership. However, these features were in place in August 2013, when the appellants purchased the property. The central section appears untouched for a long period of time and in my

judgement, it is likely that the internal pens and troughs have remained in place since Mrs Knowles' purchase in 1985.

30. While I accept that some intervening storage could have taken place since that time elsewhere in the building, no trace of that use remains. Even if the other parts of the building were used in relation to the wider mixed use of the land, it is highly likely that the storage of feed, hay and other equipment to support the keeping of sheep and horses would have been limited to smaller parts of the building.
31. In reaching my findings, I have taken account the appeal decision submitted by the Council regarding Hatts Copse Farm (Ref: APP/W1715/W/22/3307667). However, in that case, the building in question was in active use, and therefore I did not find this appeal decision to be comparable to the situation before me.
32. In my judgement, it is therefore likely that the piggery building has remained largely unchanged since 24 September 1985 and as a building, it ceased to be part of an established agricultural unit used solely for agricultural purposes before 20 March 2013. Furthermore, I find that the building is likely to have been last in use as a piggery on or before 24 September 1985. Consequently, the proposal would satisfy the requirements of paragraph Q.1(a) (ii) of the Order.
33. The appeal site includes a narrow strip of land immediately alongside the westerly edge of the piggery building. The existing plans detail a door within the westerly elevation of the lean to structure towards the northerly end of the building. Whilst the strip of land was not included in the 1985 conveyance, this doorway would facilitate access to the strip of land and thus it would fall to be considered to be closely associated with the building and serving its purposes.
34. The northerly side of the building directly faces the access track from Blackwell Road, with a small strip of grass between it and the adjacent fields with gates. The southerly end of the building faces an area of hardstanding, which appears in part as a raised area above other adjacent land. The easterly elevation adjoins a further area of hardstanding. These areas of land are indicated in the conveyance plan. In my judgement, these areas are such that they would have been used to accommodate the movement of pigs in and out of the building, and to facilitate their keeping and collection for the supply chain. They clearly form land immediately beside the piggery building or closely associated within it.
35. Having regard to the definitions of site and curtilage within the Order, I am therefore satisfied that the appeal site as drawn would satisfy the provisions of the Order.
36. Taking all matters into consideration and based upon all that has been presented to me, together with my own observations and the balance of probabilities, I conclude that the proposal would comply with the definition of permitted development as set out in the Order, with particular regard to paragraph Q.1(a) and the definition of site and curtilage. Consequently, the proposal would constitute permitted development.

Other Matters

37. I have considered the evidence provided by the Council and the appellants with regard to the prior approval matters as set out in the Order. The Council had no objection in relation to any other prior approval matter, subject to the imposition of conditions in regard to two matters.
38. Any potential contamination could pose a danger to workers, other receptors and future users/occupiers. Due to uncertainty in relation to filled quarries to the south of the building, Worcestershire Regulatory Services (WRS) recommend tiered investigation conditions. I find no reason to consider otherwise. I note that the existing plans indicate an asbestos roof, which is considered by the appellants' structural surveyor to be deleterious and therefore likely to be removed. The presence of asbestos cement is also indicated. Matters pertaining to potential contamination can be controlled by suitable conditions, and the appellants make no objection in this regard.
39. The building is served by an existing access track with a gate to Blackwell Road, without pedestrian visibility splays. The appeal scheme would generate further vehicular trips, estimated by the appellants to be in the region of 18-24 per day, and I find no reason to consider otherwise. Therefore, the increase in vehicles arising from the development could result in vehicles obstructing the highway and/or increase the risk of collision between highway users. Although the access to the site is not within the boundary of the planning application, the appellants advise that they own sufficient land on either side of the access at Blackwell Road to accommodate any necessary improvements to ensure safe ingress and egress to the site. The main parties agree that these matters can be secured by condition, and I find no reason to consider otherwise.

Conditions

40. Paragraph W (13) of the Order states that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the approval.
41. I have considered the conditions suggested by the Council, comments from the appellants including pre-commencement, and in light of the Planning Practice Guidance (PPG). For clarity, precision and to ensure compliance with the PPG, I have undertaken some amendments, editing and rationalisation. Where conditions require compliance prior to the commencement of development, the appellants have provided their written agreement to their terms as per section 100ZA of the Town and Country Planning Act 1990 (as amended).
42. The appellants' attention is drawn to the condition required by the Order, which refers to the time limit for the completion of the development. I have included this condition within the schedule for completeness. In order to ensure certainty and clarity, it is reasonable and necessary to impose a condition detailing the approved plans.
43. It is not clear from the submitted plans and accompanying information as to whether the final appearance of the development will be as indicated on the proposed plans, including whether the roof will be as in situ. Paragraph 140 of the Framework sets out that local planning authorities should ensure that

relevant planning conditions refer to clear and accurate plans and drawings which provide visual clarity about the development. It is therefore necessary and reasonable to impose condition 3 to control the materials to be used in the development. This is a pre-commencement condition to ensure that the appearance of the development can be suitably controlled prior to the commencement of any operational works taking place.

44. In light of the concerns of WRS and as a precautionary approach to addressing contamination that could be unexpectedly encountered, I have imposed conditions 4, 5 and 6. Conditions 4 and 5 are pre-commencement conditions to ensure that the development can be safely carried out without unacceptable risks to workers and other receptors and that any risks to future users/occupiers of the site are mitigated and /or minimised.
45. It is reasonable and necessary to impose a condition to ensure that suitable access to the development is provided, in the interests of highway safety. Condition 7 therefore requires the submission and approval of details prior to commencement, and the implementation of the approved details prior to the first occupation of the development. A pre-commencement condition is necessary in order to ensure that the direct impacts of the development upon transport and highway matters can be safely mitigated, and to ensure highway safety during the operational works pursuant to the development.
46. I have imposed condition 8 to ensure that car parking spaces are in place prior to the first occupation of the development, in the interests of future occupiers of the development. Condition 9 is reasonable and necessary to ensure that cycle parking is approved and in place prior to the first occupation of the development, in the interests of sustainable travel and the future occupiers of the development. Condition 10 is reasonable and necessary in the interests of promoting sustainable transport.

Conclusion

47. For the reasons given above the appeal should be allowed and prior approval should be granted, subject to the conditions I have set out in the attached schedule.

J Moore

INSPECTOR

Schedule of Conditions - Appeal Ref: APP/P1805/W/23/3326124

- 1) The development hereby permitted shall be completed within a period of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18-38-01A; 18-38-41A; 18-38-04; 18-38-42A; 18-38-43A; 18-38-44A.
- 3) Notwithstanding any materials detailed on the approved plans, no development shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including any replacement roofing) to be used in the development. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
- 4) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
- ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 5) No development shall take place where (following the assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority.

The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 7) No development shall take place until a scheme detailing access improvements has been submitted to and approved in writing by the local planning authority; and the development shall not be occupied until the access improvements have been constructed in accordance with the approved details.
- 8) The car parking spaces hereby permitted shall be laid out prior to the first occupation of the dwellings and shall be kept available at all times for the parking of motor vehicles by the occupants of the dwellings and their visitors and for no other purpose.
- 9) The dwellings hereby approved shall not be occupied until details of cycle parking have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved cycle parking has been laid out within the site in accordance with the approved details, and the approved cycle parking shall thereafter be kept available for the parking of cycles.
- 10) The dwellings hereby permitted shall not be occupied until a residential Travel Welcome Pack promoting sustainable forms of access to the development has been submitted to and approved in writing by the local planning authority. The pack shall be provided to the first owner of each dwelling at the point of occupation.

END OF SCHEDULE